IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 403 OF 2005

Captain Krishna Behari ... Petitioner

V/s.

Air India Limited ... Respondent

Mr. Ravi Pai with Mrs. Bina R. Pai for petitioner.
Mr. J. Saluja with Mr. H. Rehman i/b. M.V. Kini & Co. for the respondent.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 22nd November, 2006

P.C.

. Rule. Heard forthwith.

2. The petitioner approached this Court challenging the withholding of some terminal benefits. The petitioner was allowed to retire on 31st October, 2000. On 30th October, 2000, the Chief Vigilance Officer had addressed a letter to Director, Finance (O), Finance Department, Santacruz pointing out that it was learnt that the petitioner is retiring on the attainment of superannuation on 31st October, 2000 and since a Vigilance case is pending against him, his dues may be withheld till further communication from

the Chief Vigilance Officer. The petitioner has been paid part of his terminal benefits. According to the petitioner the employer's contribution to Provident Fund, Leave Encashment and revision of pay scale has been withheld. The respondents have filed reply opposing the grant of relief and have referred to and relied upon Regulation 71-A(i), which reads as under:

> Disciplinary proceedings if instituted while the employee was in service whether before his retirement or during his employment or on contract, shall, after the final retirement of the employee be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner, as if the employee has continued in service."

. We need not for the purpose of the present argument consider the other sub-regulations. The regulation contemplates that disciplinary proceedings were pending at the time when the employer was due to superannuate. In the instant case, apart from internal correspondence, there is no letter addressed to the petitioner either suspending him or issuing a charge-sheet or even calling upon him to show cause at that time or on the date when he retired. The Show Cause Notice is dated 21st June, 2004 much after the petitioner was allowed to retire. Apart from that the other aspect of the matter is that said regulation

became applicable nearly one year after the petitioner was allowed to retire. In other words, it was not part of the condition of the service of the petitioner herein.

2. The petitioner had also contended that there were other senior officers in respect of the same charge, who have been allowed to retire and from whom no deductions have been made. As the petition is being disposed of on the reply filed on behalf of respondent opposing admission, we do not propose to consider that aspect of the matter.

3. The question that, however, remains is whether it was open to the respondents after petitioner had retired and when there were no service regulations permitting the respondents to commence an enquiry after retirement to withhold the benefits of petitioner to which he is entitled to and as a corollary. Whether it is open to the respondents to apply regulations retrospectively, which have come into force subsequently.

. The law is now well settled that the conditions of the service at the time of retirement

would be applicable. It is not open to the employer to apply conditions of service which are not applicable and or which have come into force after the employee retires. In the instant case, therefore, regulation 71 was not in existence at the time when the petitioner was allowed to retire and also on that date, there were no other service regulations permitting the respondents either to prevent the petitioner from retiring or withholding his terminal dues. The action of the respondents is clearly without the authority of law. On this point alone, the petition deserves to be allowed.

4. In the light of above, following directions:

i) The respondents are directed, within four weeks from today to pay to the petitioner the unpaid employer’s contribution to provident fund and also encashment of amount towards available privilege leave within twelve weeks.

ii) In case the petitioner is entitled to the revision of pay scale, that exercise also be done and if the petitioner is not entitled for revision of pay scale, the petitioner should be informed with reasons,

as to why he is not entitled within twelve weeks.

iii) Insofar as three missing LIC instalments of Annuity is concerned, it will be open to the petitioner to pursue the matter with LIC and respondents have no objection to the LIC paying whatever amounts the petitioner is entitled to.

. Rule made partly absolute. There shall be no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]